## REMARKS

Applicants thank the Examiner for the courtesies extended to Applicants' representative at the interview on August 8, 2007. During the interview, the rejections contained in the Office Action mailed on June 4, 2007, were discussed. The substance of the interview is incorporated into this Reply.

In the Office Action,[1] the Examiner requested certain information under 37 C.F.R. § 1.105; objected to claims 2 and 14 because of informalities; objected to claims 2-9 and 14-21 as being dependent upon a rejected base claim, but allowable if rewritten in independent form; rejected claims 1, 12, 13, 24, and 25 under 35 U.S.C. § 112, ¶ 2, as being indefinite; and rejected claims 1, 10-13, and 22-27 under 35 U.S.C. § 102(b) as being anticipated by an article titled "Get Set for Loan-Level Pricing" by Arnold Kling ("Kling").

Applicants thank the Examiner for indication of the allowable subject matter in claims 2-9 and 14-21. Applicants note that they have amended claims 13 and 25 to correct typographical errors and without changing the scope of these claims. Claims 1-27 remain pending and under examination. Applicants respectfully request reconsideration of these claims in view of the following remarks.

### A. Requirement for Information

On page 2, ¶ 4 of the Office Action, the Examiner requested information regarding "a pilot program conducted by Freddie Mac that adjusts guarantee fees for

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1 The Office Action contains a number of statements reflecting characterizations of what the Examiner considers to be prior art and Applicants' claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

lender-customers according to a risk-rating matrix" as mentioned in Kling. Specifically, Kling refers to loan level risk-based guarantee fee pricing; that is, determining the guarantee fee to be charged for a particular loan based upon the anticipated risk the loan presents. According to the article, Fannie Mae was using a grid-based approach for guarantee fee pricing while Freddie Mac was engaging in a pilot program for automatic generation of loan-level risk-based guarantee fee pricing. (See Kling at 21.)

Applicants respectfully traverse this request for information because the pilot program discussed in Kling is not reasonably necessary to properly examine this application nor is it relevant to a patentability determination. See MPEP § 704.11. As discussed below, there are significant fundamental differences between the claimed invention and the pricing of the guarantee fee for a particular loan at the time of purchase as described in Kling. (*See infra* Section V.) Nevertheless, in order to respond to the Examiner's request for information, Applicants' representatives conducted research within Freddie Mac's records and discussed the matter with Freddie Mac employees with personal knowledge of the pilot program referred to in Kling.

Applicants have determined that Freddie Mac conducted a pilot, corresponding to the pilot mentioned in the Kling article, for a three-month period beginning in late 1997 and ending in early 1998. Two Freddie Mac lenders (customers) participated in the pilot during which time they received guarantee fee pricing for certain loans they presented to Freddie Mac. The pricing was determined based upon Freddie Mac's assessment of the risk associated with particular loans at the time of the purchase. This assessment was made using Freddie Mac's proprietary automated underwriting system known as

Loan Prospector which took into account numerous factors, including the loan to value ratio (LTV) of the mortgage loan and the borrower's credit risk score.

It is Applicants' belief that the pilot was unsuccessful in key regards due to the perceived lack of transparency in the pricing determination. For example, for similar loans, the guarantee fee would increase from one week to the next, but the lender would not be able to determine the reason for this discrepancy. Nonetheless, this grid-based pricing techniques, while not as precise or accurate, offered greater transparency and were thought to be more acceptable to lenders.

Applicants note that the risk-based pricing system described above was implemented at the time of selling a loan. Accordingly, the guarantee fee was established once and then remained fixed over the life of the loan. Indeed, as discussed below, this program is different from the claimed invention at least because it used a fixed guarantee fee.

In addition, the Interview Summary dated August 8, 2007, requested information regarding how the claimed formulas were derived. In response, Applicants submit that the formulas were derived by Applicants and are not from a source such as a textbook.

Applicants believe that they have provided all of the information requested by the Examiner. Should the Examiner require anything else, the Examiner is requested to notify the undersigned.

**B. Claim Objections**

In the Office Action, the Examiner objected to claims 2 and 14 because according to the Examiner, "performance index $PI_t$, price reset frequency, [and] performance measurement $PM_t$ [that are recited in the claim] are said to be parameters

of the formula . . . however, they are not recited in the formula" and that "Applicants should define variables as they appear in formulas and [should] avoid defining variables that are not recited it the formula." (Office Action at 4.) Applicants respectfully disagree and traverse this objection. Applicants are aware of no rule that requires Applicants to define variables as they appear in formulas or to avoid defining variables that are not recited it the formula." (*Id.*) The Examiner is respectfully requested to point to such a rule if he maintains this objection in the next office action.

Moreover, the Examiner appears to have misread claims 2 and 14. These claims require only that the guarantee fee be "based on the . . . parameters" including performance index $PI_t$, price reset frequency, and performance measurement $PM_t$. As recited by these claims, permanent price adjustment $PPA_t$ and temporary price adjustment $TPA_t$, which are explicitly recited in the formula of claims 2 and 14, are dependent on the performance index $PI_t$. Therefore, the guarantee fee is calculated "based on" the performance index $PI_t$.

Regarding the claimed price reset frequency, the guarantee fee is calculated "based on" the price reset frequency because the price reset frequency is used to determine the time t in $G_t$, $PPA_t$, and $TPA_t$. The price reset frequency can be, for example, annual, semi-annual, or quarterly, and allows the guarantee fee to be reset at each period. (See Applicants Specification at p. 11, lines 1-6; p. 12, lines 5-11.) Therefore, the guarantee fee at any time ($G_t$) is determined "based on" the claimed price reset frequency.

Regarding the claimed performance measurement $PM_t$, $PM_t$ is used to calculate the permanent price adjustment $PPA_t$, which is explicitly recited in the formula for

calculating the guarantee fee. (See, e.g., Applicants' claims 7 and 19.) Therefore, the guarantee fee is calculated "based on" a performance measurement $PM_t$.

In view of the foregoing remarks, Applicants therefore respectfully request the Examiner withdraw the objection to claims 2 and 14.

**C. Rejection Under 35 U.S.C. § 112, ¶ 2**

In the Office Action, the Examiner rejected claims 1, 12, 13, 24, and 25 under 35 U.S.C. § 112, ¶ 2, as being indefinite for failing to particularly point and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully traverse this rejection and request reconsideration in view of the following reasons.

Specifically, the Examiner rejected claims 1 under § 112, ¶ 2, alleging that "the phrase 'a manner of securing' renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention." (Office Action at 5.) Applicants respectfully traverse this rejection. The Examiner references MPEP § 2173.05(d), which discusses exemplary claim language and states: "In those instances where it is not clear whether the claimed narrower range is a limitation, a rejection under 35 U.S.C. § 112, second paragraph should be made." The "identifying a manner of securing a guarantee fee" language of claim 1, however, does not claim a narrower range. Moreover, contrary to the Examiner's statement, the limitations following the "manner of securing a guarantee fee for the contract" language are part of the claimed invention at least because they refer to the guarantee fee, which was first referred to as part of the "manner of securing a guarantee fee for the contract" language. In addition, the specification and other claims (e.g., claim 10) provide several manners of securing guarantee fees. Therefore, one of ordinary skill in the art at the

time of the invention would not have only understood the "manner of securing a guarantee fee" language when read in view of the specification and other claims, that person would have understood that the language following the "manner of securing a guarantee fee" limitation as part of the claimed invention.

The Examiner also objected to claim 1, line 7, and claim 13, line 13, as lacking antecedent basis for "the guarantee fee." (Office Action at 5). However, line 5 in claim 1 and line 9 in claim 13 provides antecedent basis by reciting "securing a guarantee fee." Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 1 and 13 under § 112.

With respect to claims 12 and 24, the Examiner rejected these claims under § 112, ¶ 2, alleging that "the phrase 'having insufficient data' [in these claims] renders the claim[s] indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention." (Office Action at 5.) Applicants respectfully traverse the Examiner's rejection because one of ordinary skill in the art at the time of the invention would have readily understood the "assets having insufficient data to construct a robust predictor model" language in view of Applicants' specification and would have understood the limitations following the "having insufficient data" language to be part of the invention. For instance, Applicants' specification provides an example of assets that may lack data, such as small multi-family mortgages. (Applicants' Specification at 4-5.) Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 12 and 24 under § 112.

Finally, the Examiner rejected claim 25 under § 112, ¶ 2, as lacking antecedent basis for "the performance-based certificate contract" in lines 5-6. There appears to

have been a typographical error in this claim and accordingly, Applicants have amended claim 25 to delete "the performance-based certificate contract" language and insert "the credit enhancement" language. In view of this amendment, Applications respectfully request that the Examiner withdraw the rejection of claim 25 under § 112.

**D. Rejection Under 35 U.S.C. § 102(b)**

In the Office Action, the Examiner rejected claims 1, 10-13, and 22-27 under 35 U.S.C. § 102(b) as being anticipated by Kling. Applicants respectfully traverse this rejection for the following reasons.

To properly establish that Kling anticipates Applicants' claimed invention under 35 U.S.C. § 102, each and every element of each of the claims in issue must be found, either expressly described or under principles of inherency, in that single reference. Furthermore, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." See MPEP § 2131, quoting Richardson v. Suzuki Motor Co., 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

Kling does not disclose each and every element recited by Applicants' claimed invention. Claim 1, for example, recites a combination including identifying a pool of assets; identifying parameters for the assets; identifying a manner of securing a guarantee fee for the contract; issuing a security reflecting the parameters of the assets; and resetting the guarantee fee for the security, based on realized performance of the assets, once every predetermined time period. Kling does not teach or suggest at least this combination of elements.

Instead, Kling discloses adjusting "guarantee fees for lender-customers according to a risk-rating matrix." (Kling at 21.) Specifically, Kling is directed to using a

credit score and loan to value ratio to establish a fixed guarantee fee at the time of selling a loan. Kling does not track the performance of assets and reset the guarantee fee based on the performance, as recited by claim 1. Moreover, Kling only establishes the guarantee fee at the time the loan is purchased, and does not reset the guarantee fee "once every predetermined time period," as recited by claim 1. Accordingly, Kling does not teach or suggest of "resetting the guarantee fee, based on realized performance of the assets, once every predetermined time period," as recited by claim 1 (emphasis added).

Setting a guarantee fee once, at the time a loan is purchased, suffers the downfalls that the assessment of risk associated with the loan may prove to be incorrect. For example, an individual with a low FICO score and high loan-to-value ratio may make all of their loan payments on time and yet Kling would have established an unnecessarily high, fixed guarantee fee based on projected risk. In contrast, the claimed invention self-adjusts to allow the guarantee fee to vary over time based on the performance of the assets and, unlike Kling, is not fixed based on an assessment of risk at the time a loan is purchased.

Kling also does not teach or suggest "identifying a manner of securing a guarantee fee," as recited by claim 1 (emphasis added).

Regarding claim 10, which defines exemplary ways to secure a guarantee fee, the Examiner asserts that Kling discloses "securing future guarantee fee increases [by] varying an interest payment to a security holder as a guarantee fee varies." (Office Action at 6.). However, Kling does not teach or suggest "future guarantee fee increases" as recited by claim 10; Kling uses a fixed guarantee fee. Further, Kling's use

of a fixed guarantee fee does not constitute a teaching or suggestion of "varying an interest payment to a security holder as a guarantee fee varies," as required by claim 10 (emphasis added). Accordingly, Kling does not teach or suggest "identifying a manner of securing a guarantee fee," as recited by clams 1 and 10.

Because Kling fails to teach or suggest each and every element recited by claim 1, Kling cannot anticipate claim 1 at least for the foregoing reasons. Independent claims 13 and 25, although of different scope, recite elements similar to those of claim 1 and are also allowable at least for the same reasons as claim 1. In addition, claims 10-12, 22-24, 26, and 27 depend from claims 1, 13, or 25, and are allowable at least because they depend from claims 1, 13, or 25, which are allowable for the reasons set forth above. Applicants therefore respectfully request that the Examiner reconsider and withdraw the rejection of claims 1, 10-13, and 22-27 under 35 U.S.C. § 102(b) as being anticipated by Kling.

**E. Conclusion**

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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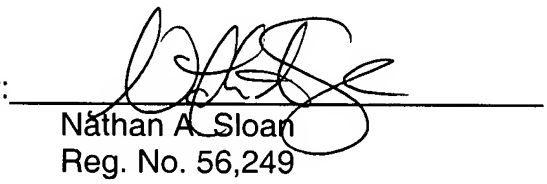
GARRETT & DUNNER, L.L.P.

Dated: December 4, 2007

By: 
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